

REMARKS

The above-referenced application has been reviewed in light of the Office Action mailed July 15, 2005. Claims 5, 6, 8, and 9 were canceled in a previous amendment. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the prior art. Prompt and favorable consideration of these claims is earnestly sought.

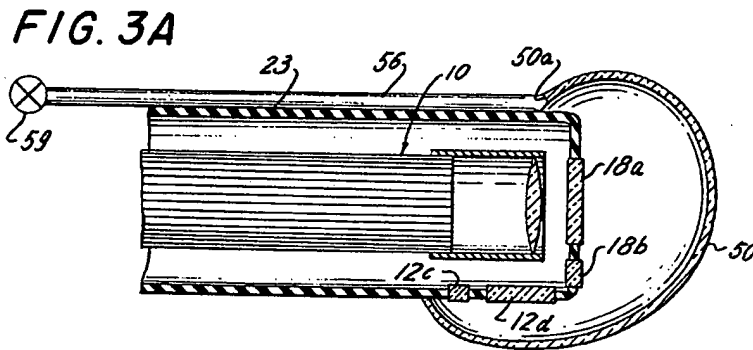
The Office Action rejected claims 1-4 and 7 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 3,417,745 to Sheldon (the '745 patent) or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over the '745 patent. According to the Office Action, the '745 patent discloses a rigid shaft and an inflatable bladder having a wedge shape when inflated (see Figure 4 reproduced below). In addition, it was asserted that it would have been obvious that the inflatable bladder of the '745 patent has the shape of a wedge since it tapers in the proximal direction.

Presently, claim 1 recites, *inter alia*, an apparatus including a "shaft having an open first end and an open second end defining a lumen therebetween" and "an inflatable bladder disposed at the distal end and in fluid communication with the lumen, the inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space."

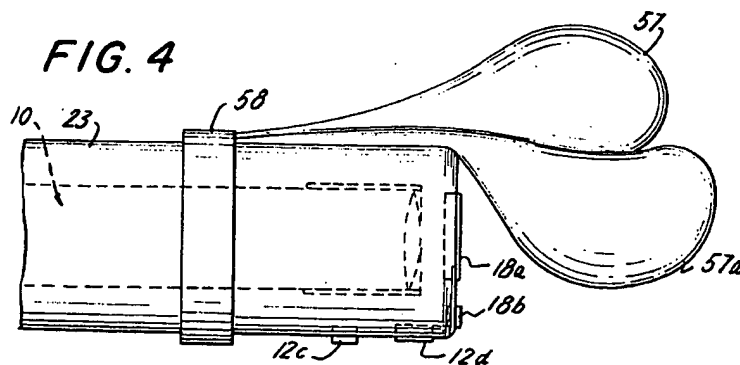
The '745 patent relates to a device having a shaft and an inflatable member 50 (see Figure 3A reproduced below). The shaft has a closed distal end having viewing windows 18a and 18b disposed therein. Additionally, the inflatable member 50 is adapted for urging soft tissue away

from the distal end of the shaft thereby allowing improved viewing of the area through an image conductor 10. Specifically, the '745 patent discloses (Column 8, lines 49-54):

[i]t was found that in many examinations the spinal fluid was turbid an impaired is [sic] visibility. I have solved this problem by the construction in which an inflatable transparent member is mounted at the distal end of the spinescope. The inflated member 50 displaces the turbid spinal fluid and produces thereby a clear field of vision.



Further still, the '745 patent discloses (See Column 8, line 74 – Column 9, line 23 and Figure 4 reproduced below) that "[i]n some cases it was found necessary to provide an adequate space between the optical viewing system such as 19, or 19c, and the examined part" and that "[t]he inflation of the member 57 causes separation of the examined part from the distal end of the spinescope.



In addition, the '745 patent discloses that "[t]his is the situation in the extra-dural space in the spinal cord which normally does not have any open space but only a potential space to be created by a pressure against the organs which occupy it." The examined part referred to in the '745 patent is a herniated disc which is formed from soft tissue. In the Office Action, it was asserted that the embodiment illustrated in Figure 4 discloses wedge shaped bladders. In the embodiment shown in Figure 4 above, the inflatable members 57 and 57a are not disposed at the distal end of the shaft, but are longitudinally spaced apart from the distal end. In addition, the inflatable members 57 and 57a approximate a "tear drop" shape not a "wedge" shape as recited in claim 1.

Therefore, it is evident that the inflatable member disclosed in the '745 patent displaces soft tissue and/or fluid that may exist in the viewing path of the spinescope. There is no disclosure or suggestion in the '745 patent for an inflatable bladder to separate "adjacent portions of bone tissue" as recited in claim 1. The '745 patent does not disclose or suggest an apparatus with a "shaft having an open first end and an open second end defining a lumen therebetween" and "an inflatable bladder disposed at the distal end and in fluid communication with the lumen, the inflatable bladder having the shape of a wedge upon inflation such that the inflatable bladder separates adjacent portions of bone tissue thereby creating a working space" as recited in claim 1. It is respectfully submitted that claim 1 is not anticipated or suggested by the '745 patent and the rejection of the Office Action has been overcome. Since claims 2-4 and 7 depend directly or indirectly from amended independent claim 1, it is respectfully submitted that these claims are also allowable over the '745 patent.

Appl. No. 10/743,192


Amdt. dated December 12, 2005

Reply to Office Action Mailed July 15, 2005

In view of the foregoing remarks, it is respectfully submitted that all claims pending in the application, namely claims 1-4 and 7, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

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